

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554
FCC 17-124**

**Proceeding on Modernizing Toll Free Numbering System, Notice of Proposed
Rulemaking, WC Docket No. 17-192; CC Docket No. 95-155**

Comments of Network Telephone Services Inc.

Network Telephone Services Inc. (NTS) respectfully offers the following comments in response to the Federal Communications Commission's (FCC) request for public comment in connection with the FCC's Notice of Proposed Rulemaking referenced as FCC 17-124. NTS's comments are directed toward the FCC's review of amending its rules to add a new auction element into the process for the assignment of certain toll-free numbers that will become available beginning with the release of the upcoming 833 toll-free code.

NTS has operated its telecommunications business since 1988 and we have participated in the toll-free telephone number assignment process since our company's inception. NTS's opinion is that the FCC and the general public are adequately served with the FCC continuing under its current first-come, first served approach for the assignment of new toll-free numbers as future toll-free codes are released. An auction is not necessary for the typical toll-free number assignment which usually has only one party seeking a telephone number. Any benefit that will be derived in introducing an auction element to the number assignment process will be more than countered by the auction's costs and the red tape involved in having the FCC implement and administer an auction process for a small number of toll-free number assignments.

The general public would be better served if the FCC's focus in the number assignment process was directed toward protecting established public-benefit toll-free telephone numbers. As an example, the federal government administers the Medicare program and it offer callers a toll-free telephone number spelling out "1-800-Medicare" for people to ask questions regarding Medicare's programs and services. There is nothing currently in place under FCC rules to restrict anyone from obtaining the corresponding "1-833-Medicare" telephone number when this becomes available. Would a Medicare-insurer like Anthem Blue Cross or Health Net benefit from obtaining the soon to be released "1-833-Medicare" toll-free number when it becomes available? The calling public can easily be fooled with the corresponding telephone numbers spelling out "Medicare."

Similarly, the Red Cross currently promotes to the public their telephone numbers "1-800-Red Cross" and "1-800 Help Now" in carrying out their good deeds. If an unsavory fundraiser hi-jacks the corresponding 833 toll-free code for one of these telephone numbers, it's easy to imagine what type of ugly problems could result.

The Internal Revenue Service offers a toll-free telephone number ending in the four digits '1040 for taxpayers to use to request answers to their income tax filing questions. Based on personal experience in trying to get through to the IRS using their toll-free number, it is likely that the IRS toll-free number receives thousands of calls a day. Wouldn't a commercial tax preparer like H&R Block or TurboTax find new customers by people who either mis-dial or are confused by the 833 toll-free version of the corresponding IRS taxpayer hotline number?

In reviewing the FCC's proposal to change the way it distributes new toll-free telephone numbers, nothing is found to address these type of conflict issues that will come up with every new toll-free number assignment. We have heard tales of companies held for ransom when someone obtains their brand's telephone number before they do. In connection with public benefit telephone numbers, it should be a fairly straightforward task to identify certain toll-free telephone numbers worth protecting and then restrict the corresponding numbers from assignment under the new 833 toll-free code.

If the FCC proposals under this Rulemaking go forward as currently presented, you might see two major accounting firms enter into the FCC-sponsored auction for the 833 toll-free code version of the IRS taxpayer toll-free telephone number. If a bidding war ensued for the target 833 telephone number, there may be some one-time auction money generated by the FCC. At the same time it's significant to note that the Internal Revenue Service, as a government agency, does not enjoy the same protections under either federal trademark law and unfair competition laws that a private sector business has available.

The FCC should consider in their analysis that there are courts to resolve conflicts involving an established number assigned to a party in the private sector. The party with the winning bid at the FCC auction could be restrained by a court ruling from ever using the number that they have won at auction. A private sector party has rights in an established or recognized vanity toll-free telephone number that can be protected. Basically, a business that has used a toll-free telephone number in its operations acquires common law rights. A vanity number in place constitutes a valuable business asset that is recognized by a company's customers. Under current FCC rules, a company may reserve the equivalent to its assigned vanity number by being the first in line to acquire the similar telephone number when a new toll-free code is introduced. However, if they are not the first to reserve the telephone number, they may still have legal recourse if a competitor starts using a confusingly similar mark or telephone number.

Take the frequently used "1-800-Flowers" business operation as an example. If a competing online florist is awarded the "1-833-Flowers" telephone number in an FCC auction, my first call as the current assignee of the "1-800-Flowers" telephone number will be to a good civil litigator to determine whether the competitor's use of the confusingly similar telephone number can be enjoined. The FCC has never had a dispute resolution policy in place to deal with these types of issues. Instead, trademark infringement or unfair competition issues have had to be addressed by the courts under trademark protection laws and unfair competition laws.

By the FCC introducing a new limited-use auction element into the toll-free telephone number assignment process, this will not bring any real resolution to the frequent types of conflict issues that are experienced whenever the FCC introduces a new toll-free code. A successful auction bidder would still not be entitled to infringe on another's party's trademark or to unfairly compete with a competitor in the marketplace simply because they were the highest bidder in an FCC auction.

NTS's position is that the proposed changes offered by this FCC Rulemaking will only add minimal value to the toll-free telephone number assignment process. The cost to implement and maintain an auction will most likely offset any revenue that can be expected to be generated. The general public would instead be better served by the FCC restricting the assignment of telephone numbers in future toll free codes that correspond to important public-benefit telephone numbers.

Respectfully submitted,

NETWORK TELEPHONE SERVICES INC.

A handwritten signature in dark ink, appearing to read "Daniel H. Coleman", written over a horizontal line.

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